



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Johns Hopkins University

**File:** B-233384

**Date:** March 6, 1989

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### **DIGEST**

1. Allegation of competitive prejudice as a result of solicitation's failure to indicate that price would be equally weighted with technical factors in evaluation of proposals is denied; where a solicitation does not expressly state the relative importance of price versus technical factors, price and technical factors are considered to be approximately equal in importance.

2. Awardee's replacement of two key personnel in best and final offer (BAFO) was not a major change so as to indicate the unacceptability of the initial proposal, and thus is unobjectionable, where the initial proposal was the highest-rated and the substitution of the two employees raised the proposal score minimally; substitution obviously did not constitute major proposal revision.

3. Protest that awardee improperly was permitted to propose part-time key personnel is denied where request for proposals specified that part-time employees were acceptable under "unusual circumstances," and agency reasonably determined that unusual circumstances were present for awardee's two proposed part-time key personnel.

4. Where there is no evidence that evaluation was inconsistent with the stated evaluation criteria, or otherwise improper, allegation that protester was prejudiced by the short duration of the evaluation is without merit; the contracting agency, not the General Accounting Office, is in the best position to determine the amount of time necessary to conduct a satisfactory evaluation.

5. Composition of technical evaluation board is within the discretion of the agency, and where protester has not shown fraud, bad faith, conflict of interest, or actual bias, there is no basis to question composition of the panel.

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## DECISION

Johns Hopkins University protests the award of a contract to John Snow International, under request for proposals (RFP) No. W/HP-88-005, issued by the Agency for International Development (AID) for services involved in a maternal and neonatal health and nutrition project in developing countries.

We deny the protest.

The solicitation requested technical and training assistance as well as applied research. Technical evaluation of proposals was to be in accordance with the following three numerical criteria and respective numerical weighting: responsiveness and quality of the proposal--40 points; qualifications of key personnel and consultants--40 points; institutional characteristics and capabilities--20 points, for a total of 100 technical points. Cost was not assigned a numerical weight.

AID received five offers in response to the RFP. Following a technical evaluation by AID's evaluation board, the agency found three offerors technically acceptable and placed them in the competitive range, ranked in the following order, from highest to lowest technical scores: Snow, Hopkins, and Management Sciences for Health. AID then conducted discussions with these offerors on the technical and cost aspects of their proposals. After the firms submitted best and final offers (BAFOs), Snow was selected as having the proposal most advantageous to the government, with the highest technical score and lowest cost.

Hopkins principally contends that Snow was preselected; more specifically, that Snow was given a competitive advantage through information on the cost evaluation not disclosed to Hopkins. The protester further alleges that Snow's technical proposal contained deficiencies so severe that the firm should not have been included in the competitive range, and complains about the conduct of negotiations, the duration of the evaluation of BAFOs, and the composition of the evaluation board.

Based on our review of the record, we find that the evaluation had a reasonable basis and that there is no indication of any improprieties in the conduct of the procurement. The number of allegations being voluminous, we discuss below a number of Hopkins' more significant arguments.

## COST EVALUATION

Although AID contends otherwise, Hopkins alleges that it was never informed during discussions that cost would be weighted equally with technical factors in the evaluation of proposals; according to the protester, this equal weighting deviated from the RFP which, by stating that cost would not be assigned a numerical weight, Hopkins believed implied that cost would have less importance than technical factors. Hopkins concludes that since the equal weighting scheme was disclosed solely to Snow, that firm had an improper competitively advantage.

We have held that where, as here, an RFP indicates that cost will be considered, without explicitly indicating the relative weight to be given to cost versus technical factors, it must be presumed that cost and technical considerations will be accorded approximately equal weight and importance in the evaluation. Actus Corp./Michael O. Hubbard and L.S.C. Assocs., B-225455, Feb. 24, 1987, 87-1 CPD ¶ 209.

As discussed above, the RFP here did not provide a formula explaining the comparative weights of price and technical factors in the selection process. The protester's interpretation notwithstanding, the RFP statement that cost would not be assigned a numerical weight, in our view, did not suggest that cost would have less than equal weight; indeed, in addition to the statement that cost would not be given a numerical rating, the RFP specifically stated that price would be an important consideration in the selection decision, and that AID would select for award the most advantageous offer with the greatest value to the government. Therefore, regardless of whether Hopkins was actually notified during discussions that cost and technical considerations would be weighted equally in the evaluation, we agree with the agency that the equal weighting of cost and technical factors was consistent with the RFP, and thus was proper. Accordingly, the evaluation method did not result in Snow receiving an improper competitive advantage.

## TECHNICAL EVALUATION

Hopkins contends that Snow's proposal was technically deficient on substantive matters of personnel to such a degree that Snow should not have been included in the competitive range, or been given an opportunity to submit a BAFO. Specifically, Hopkins claims that personnel changes made in the awardee's BAFO indicate a major change in, and

show the unacceptability of, the firm's initial proposal. Hopkins also complains that Snow's key personnel were not located at one site and had not committed to being full-time on the project, and that Snow lacked relevant experience in maternal and neonatal health. (Hopkins also initially argued that its own proposal was improperly evaluated for lack of creativity, but since the firm did not rebut the agency response on this matter, we deem this aspect of the protest abandoned. Actus Corp./Michael O. Hubbard and L.S.C. Assocs., B-225455, supra.)

Both Hopkins' and Snow's initial proposals were highly rated; the difference between the firms' initial scores was .7 point (the actual evaluation scores were not released to the protester). After the evaluation of BAFOs, both firms improved their scores, but Snow was evaluated as improving its score to a greater extent, resulting in a 4.8 point difference in the firms' final scores. The area of greatest difference between the two proposals was the technical approach criterion; there was a 4 point difference in the firms' initial proposal scores in this area, and a 4.1 point difference in their BAFOs. The agency reports that Snow's technical approach was scored higher because of innovative aspects and a generally well-thought-through presentation. In contrast, while Hopkins' proposal was determined to be a good, solid proposal with strengths in personnel and in the nature of the organization, it was determined to be not as innovative as Snow's.

In reviewing complaints about the evaluation of a technical proposal and the resulting determination of whether the proposal is within the competitive range, our function is not to reevaluate the proposal and independently judge its merits. Vista Videocassette Services, Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55. Rather, the determination of the relative merits of proposals, particularly with respect to technical considerations, is primarily the responsibility of the contracting agency, which must bear the burden of any difficulties resulting from a defective evaluation. Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. In light of this, procuring officials have a reasonable degree of discretion in evaluating proposals, which we will not disturb unless the evaluation is shown to be arbitrary or otherwise in violation of procurement laws and regulations. Id.

We agree with the agency that Snow's personnel changes in its BAFO (made in response to points raised during discussions)--the replacement of the project director with another individual originally included as a key employee, and replacement of the certified public accountant with a

mid-level financial person--are not indications of an unacceptable initial proposal; Snow's initial proposal, with the personnel originally proposed, ranked higher overall than either of the other initial proposals, and the changes in Snow's BAFO increased its score for personnel only 2.7 points. Proposals need only have a reasonable chance of being selected for award to be included in the competitive range, with any doubts resolved by inclusion. Federal Acquisition Regulation (FAR) § 15.609(a). Snow's initial proposal and BAFO clearly met this standard. Further, more generally, we fail to see how a highly scored initial proposal could retroactively be rendered unacceptable by the mere substitution of two key employees, which substitution leads to an increased BAFO score.

Hopkins' additional allegations concerning the personnel evaluation are equally without merit. First, as the agency correctly points out, there was no requirement in the RFP that key personnel be centrally located. While the protester argues that a central staff location was a concern of AID in previous procurements, any requirements of past procurements are irrelevant here. See Personnel Decisions Research Inst., B-225357.2, Mar. 10, 1987, 87-1 CPD ¶ 327.

Similarly, part-time key personnel were not prohibited by the RFP, which indicated that, in "unusual circumstances," these core individuals could be proposed on a part-time basis. AID determined that such circumstances were present for Snow, given the respected positions held by the two individuals in question with other organizations (senior representatives of Save the Children and the Population Council), the large commitments of their time to this project (50 percent for one and 57 percent for the other), and the fact that Snow's proposal fully satisfied the overall staffing requirements. The review panel concluded that the part-time involvement of the individuals was justified, reasonable, and advantageous to AID. As the protester has not argued or provided evidence that AID's conclusion was arbitrary or otherwise unreasonable, we have no reason to object on this basis.

Hopkins further complains that Snow improperly left a research advisor position vacant (to be filled at a later date) by moving the individual initially identified to fill that position to project director in Snow's BAFO. This argument is without merit. Although Hopkins cites a statement in the agency report in support of this allegation, Snow's BAFO indicates that another initially proposed individual was moved into the research advisor position, and

that a new individual was proposed for the position of administrative assistant.

Finally, with respect to the evaluation of Snow's proposal, Hopkins alleges that the awardee did not have the required institutional experience in neonatal and maternal health care. The RFP specifically provided that experience requirements could be met with subcontractors' qualifications, however, and AID found that Snow's proposed subcontractors (and key personnel) possessed the requisite experience. Hopkins has not rebutted the agency's response on this issue.

In sum, we find nothing in the record to suggest that Snow received a higher technical rating than was reasonable and consistent with the evaluation criteria. Hopkins has not shown that the agency's technical judgments are in error, arbitrary or otherwise unreasonable, but only that it believes they are wrong. It is well-established that mere disagreement with an agency's technical judgments does not carry a protester's burden of proving that the agency's technical conclusions are unreasonable. Ray Camp, Inc., B-221004, Feb. 27, 1986, 86-1 CPD ¶ 205.

#### DISCUSSIONS AND INCREASE/DECREASE IN PROPOSAL COSTS

Hopkins alleges that during discussions it was misled into increasing its proposed cost while Snow improperly was coached to become more cost competitive. While we would agree that the government does not satisfy its obligation to conduct meaningful discussions by consciously misleading one offeror while coaching another, see Unisys Corp., B-231704, Oct. 18, 1988, 88-2 CPD ¶ 360, we have reviewed the discussion questions submitted to both Hopkins and Snow, and find no evidence supporting this allegation. Rather, we agree with AID that the technical and cost questions submitted to both offerors were such that they could have led both Hopkins and Snow to revise their respective cost proposals either up or down. Hopkins does not rebut the agency's position in this regard.

Hopkins does assert that Snow's cost reduction was due primarily to the firm's failure to meet RFP personnel requirements concerning full-time efforts by key personnel. However, we already have found that Snow satisfied the RFP requirements in this regard. Further, since Snow offered the total number of person-months suggested by the RFP, it does not appear that the status of the two proposed part-time employees would affect cost significantly. We thus have no basis to question Snow's cost in this area.

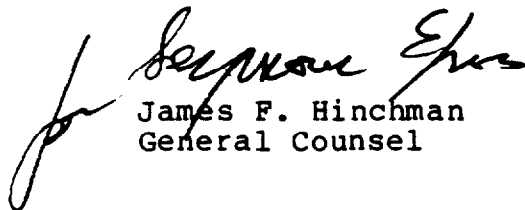
DURATION OF EVALUATION AND COMPOSITION  
OF AID'S EVALUATION BOARD

Hopkins maintains that firms' BAFOs could not have been conscientiously reviewed, as evidenced by the completion of the evaluation the day after BAFOs were submitted, and that AID's proposal evaluation board was composed of individuals with insufficient technical expertise to evaluate the proposals properly; the protester alleges that the board did not include the necessary experts in pediatrics, obstetrics/gynecology, and nurse-midwifery. Hopkins asserts that its technical proposal would have been ranked higher than Snow's had AID's evaluation board taken sufficient time to evaluate BAFOs and been made up of these specialists.

These allegations are without merit. First, the record contains no evidence that the protester was prejudiced by the duration of the BAFO evaluation; the evaluation appears to have been reasonable and consistent with the evaluation criteria in the RFP. Moreover, it is our view that the agency, not our Office, is in the best position to determine the amount of time necessary to conduct a satisfactory evaluation of proposals. Yourdon, Inc., B-222416, July 3, 1986, 86-2 CPD ¶ 30. Here, AID maintains it devoted sufficient time and effort to the evaluation, explaining that the relatively quick BAFO evaluation was due to the fact that the BAFOs did not differ radically from the initial proposals. Our Office is concerned with whether the evaluation was fair, reasonable, and consistent with the stated evaluation criteria. Id. There is no evidence that the evaluation did not meet this standard.

Finally, the composition of a technical evaluation board is within the discretion of the contracting agency and, since the protester has not shown fraud, bad faith, conflict of interest, or actual bias, we have no reason to question the composition of the board, which the agency reports did in fact include adequate expertise in medicine, epidemiology, nutrition, public health, health services administration, immunization programs, economics, operations research, and anthropology. Ray Comp. Inc., B-221004, supra.

The protest is denied.



James F. Hinchman  
General Counsel